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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940

314 U.S. 646

No. 246

JOSEPH J. KOPKE and HENRY HLAVACEK,
Petitioners,

vs.

THE STATE OF ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

Opinion of Supreme Court of Illinois Appended

WM. SCOTT STEWART,
Counsel for Petitioners.

BARNARD & MILLER, 33 S. Market St., Chicago. FRAnklin 0562

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

JOSEPH J. KOPKE and HENRY HLAVACEK,
Petitioners,

vs.

THE STATE OF ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

A.

Summary statement of the matter involved.

Your petitioners, Joseph J. Kopke and Henry Hlavacek, were convicted in the Criminal Court of Cook County, Illinois, and sentenced to the penitentiary for assault with intent to commit mayhem. The judgment of the trial court was affirmed by the Supreme Court of Illinois on February 18, 1941. A petition for rehearing was denied and the judgment was made final on April 8, 1941. Petitioners are officials of the Amalgamated Meat Cutters Union, 638, affiliated with the American Federation of

Labor. The complaining witness, Czeslaw Mikolajczyk (Abst. 12), is a butcher by trade and had been a member of the union, working at various markets on extra jobs secured through the union. A dispute arose as to the nature of the work he was doing and he claimed that he was injured by petitioners. Both petitioners testified at the trial and denied the use or possession of any gun and denied kicking. They said that the complaining witness became excited when he was questioned about what he was doing in there about the butcher shop, and that he lifted up a shovel. Kopke said that he hit the complaining witness with his hand at the time in order to protect himself and to prevent the use of the shovel.

B.

Reasons relied on for the allowance of the writ.

In this Honorable Court the judgment is assailed upon the ground that the petitioners, and each of them, were denied due process of law and equal protection of the laws in contravention of the XIV. Amendment.

1. The Federal question was presented to the State court (Abst. 142), and, although petitioners' contentions were overruled, no mention is made in the opinion of the Federal question. It is respectfully contended that the State court has decided a Federal question not in accord with applicable decisions of this Honorable Court.

2. It is respectfully submitted that the State court construed and enforced State laws in such a manner as to discriminate against your petitioners and thereby violated their right to due process of law as guaranteed them by the Federal Constitution.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of

this Honorable Court, directed to the Supreme Court of Illinois, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 25971, The People of the State of Illinois, Defendant in Error, *vs.* Joseph J. Kopke and Henry Hlavacek, Plaintiffs in Error, and that the said judgment of the Supreme Court of Illinois may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

WM. SCOTT STEWART,
Counsel for Petitioners.